

XIV, §1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, no longer contains a par. (3). See section 414(c)(1) of this title.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Tables.

The National Aeronautics and Space Act of 1958, referred to in subsec. (c)(1), is Pub. L. 85-568, July 29, 1958, 72 Stat. 426, as amended, which is classified principally to chapter 26 (§2451 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of Title 42 and Tables.

Section 407 of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104-106, div. D, title XLIII, §4305(b), Feb. 10, 1996, 110 Stat. 665.

Section 3502 of title 44, referred to in subsec. (d)(2), which in par. (1) defined “information collection request”, was omitted in the general amendment of chapter 35 of Title 44, Public Printing and Documents, by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. Pub. L. 104-13 enacted a new section 3502 of Title 44 which does not define “information collection request”.

CODIFICATION

“Section 121(d)(1) and (2) of title 40” substituted in subsec. (b)(2) for “section 205(d) of the Federal Property and Administrative Services Act of 1949” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106-65 substituted “Under Secretary of Defense for Acquisition, Technology, and Logistics” for “Under Secretary of Defense for Acquisition and Technology”.

1997—Subsec. (g). Pub. L. 105-85 struck out subsec. (g) which required the Administrator for Federal Procurement to publish an annual report relating to the development of procurement regulations.

1996—Subsec. (b)(2). Pub. L. 104-106 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

Subsec. (c)(3). Pub. L. 104-201, §1074(f)(3)(A)(i), struck out “the policies set forth in section 401 of this title or” after “in accordance with”.

Subsec. (c)(5). Pub. L. 104-201, §1074(f)(3)(A)(ii), struck out “or the policies set forth in section 401 of this title” after “section 405(a) of this title”.

Subsec. (e). Pub. L. 104-201, §1074(f)(3)(B), struck out “the policies of section 401 of this title and” after “and furtherance of”.

Subsec. (g)(1). Pub. L. 104-201, §822(1), substituted “every 12 months” for “within 6 months after November 17, 1988, and every 6 months thereafter” and inserted “and” after the semicolon at end.

Subsec. (g)(2)(H). Pub. L. 104-201, §822(2), substituted a period for “; and” at end.

Subsec. (g)(3). Pub. L. 104-201, §822(3), struck out par. (3) which read as follows: “report to Congress within 180 days after November 17, 1988, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

“(A) the extent of the paperwork burden created by the Federal procurement process, and

“(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the same time maintaining record-keeping and reporting requirements necessary to ensure the integrity and accountability of the system.”

1990—Subsec. (b)(2). Pub. L. 101-510 inserted before semicolon at end of cl. (A) “or, in the case of the Secretary of Defense, an official at an organizational level not lower than an Assistant Secretary of Defense with-

in the Office of the Under Secretary of Defense for Acquisition”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

STATUS OF DIRECTOR OF DEFENSE PROCUREMENT

Pub. L. 102-190, div. A, title VIII, §809, Dec. 5, 1991, 105 Stat. 1423, as amended by Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106-65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: “For the purposes of the amendment made by section 807 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1593) to section 25(b)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(b)(2)), the Director of Defense Procurement of the Department of Defense shall be considered to be an official at an organizational level of an Assistant Secretary of Defense within the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.”

§ 422. Cost Accounting Standards Board

(a) Establishment; membership; terms

(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the “Cost Accounting Standards Board” (hereinafter referred to as the “Board”). The Board shall consist of 5 members, including the Administrator, who shall serve as Chairman, and 4 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

(A) two representatives of the Federal Government—

(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

(ii) one of whom shall be an officer or employee of the General Services Administration appointed by the Administrator of General Services; and

(B) two individuals from the private sector, each of whom shall be appointed by the Administrator and—

(i) one of whom shall be a representative of industry; and

(ii) one of whom shall be particularly knowledgeable about cost accounting problems and systems.

(2)(A) The term of office of each of the members of the Board, other than the Administrator for Federal Procurement Policy, shall be 4 years, except that—

(i) of the initial members, two shall be appointed for terms of two years, one shall be appointed for a term of three years, and one shall be appointed for a term of four years;

(ii) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed; and

(iii) no individual who is appointed under paragraph (1)(A) of this subsection shall continue to serve after ceasing to be an officer or employee of the agency from which he or she was appointed.

(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(C) The initial members of the Board shall be appointed within 120 days after November 17, 1988.

(b) Senior staff

The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5 governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Other staff

The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5.

(d) Detailed and temporary personnel

(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 3109(b) of title 5 of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

(e) Compensation

Except as otherwise provided in subsection (a) of this section, the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (d)(1) of this section, shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or employee. Each member of the Board appointed from private life shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board. Individuals hired under subsection (d)(2) of this section may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5 for each day (including travel time) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5.

(f) Cost accounting standards authority

(1) The Board shall have the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States.

(2)(A) Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10, as such amount is adjusted in accordance with applicable requirements of law.

(B) Subparagraph (A) does not apply to the following contracts or subcontracts:

(i) Contracts or subcontracts for the acquisition of commercial items.

(ii) Contracts or subcontracts where the price negotiated is based on prices set by law or regulation.

(iii) Firm, fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

(iv) A contract or subcontract with a value of less than \$7,500,000 if, at the time the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than \$7,500,000 that is covered by the cost accounting standards.

(C) In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(3) The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this section. Such rules and procedures shall require that any cost accounting standard promulgated, amended, or rescinded (and interpretations thereof) shall be adopted by majority vote of the Board members.

(4) The Board is authorized—

(A) to exempt classes or categories of contractors and subcontractors from the requirements of this section; and

(B) to establish procedures for the waiver of the requirements of this section with respect to individual contracts and subcontracts.

(5)(A) The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value less than \$15,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section, as in effect on or after the effective date of this paragraph.

(B) The head of an executive agency may also waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the cost accounting standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to any official in the executive agency below the senior policymaking level in the executive agency.

(D) The Federal Acquisition Regulation shall include the following:

(i) Criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B).

(ii) The specific circumstances under which such a waiver may be granted.

(E) The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(g) Requirements for standards

(1) Prior to the promulgation under this section of cost accounting standards and interpretations thereof, the Board shall—

(A) take into account, after consultation and discussions with the Comptroller General and professional accounting organizations, contractors, and other interested parties—

(i) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(ii) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(iii) the scope of, and alternatives available to, the action proposed to be taken;

(B) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1)(A);

(C)(i) publish an advanced notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to subparagraph (B);

(ii) provide all parties affected a period of not less than 60 days after such publication to submit their views and comments; and

(iii) during this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(D) publish a notice of such proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

(2) Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended under this section shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended under this section shall be accompanied by prefatory comments and by illustrations, if necessary.

tors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended under this section shall be accompanied by prefatory comments and by illustrations, if necessary.

(3) The functions exercised under this section are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5.

(h) Implementing regulations

(1) The Board shall promulgate rules and regulations for the implementation of cost accounting standards promulgated or interpreted under subsection (f) of this section. Such regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the United States to—

(A) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(B) agree to a contract price adjustment, with interest, for any increased costs paid to such contractor or subcontractor by the United States by reason of a change in the contractor's or subcontractor's cost accounting practices or by reason of a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(2) If the United States and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under the Contract Disputes Act [41 U.S.C. 601 et seq.].

(3) Any contract price adjustment undertaken pursuant to paragraph (1)(B) shall be made, where applicable, on relevant contracts between the United States and the contractor that are subject to the cost accounting standards so as to protect the United States from payment, in the aggregate, of increased costs (as defined by the Board). In no case shall the Government recover costs greater than the increased cost (as defined by the Board) to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Government.

(4) The interest rate applicable to any contract price adjustment shall be the annual rate of interest established under section 6621 of title 26 for such period. Such interest shall accrue from the time payments of the increased costs were made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment.

(i) Omitted

(j) Effect on other standards and regulations

(1) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules,

and regulations promulgated by the Cost Accounting Standards Board under section 2168¹ of title 50, Appendix, shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to this section.

(2) Existing cost accounting standards referred to in paragraph (1) shall be subject to the provisions of this chapter in the same manner as if promulgated by the Board under this chapter.

(3) The Administrator, under the authority set forth in section 405 of this title, shall ensure that no regulation or proposed regulation of an executive agency is inconsistent with a cost accounting standard promulgated or amended under this section by rescinding or denying the promulgation of any such inconsistent regulation or proposed regulation and taking such other action authorized under section 405 of this title as may be appropriate.

(4) Costs which are the subject of cost accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

(k) Examinations

For the purpose of determining whether a contractor or subcontractor has complied with cost accounting standards promulgated under this section and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, any authorized representative of the head of the agency concerned, of the offices of inspector general established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States shall have the right to examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to compliance with such cost accounting standards.

(l) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 93-400, §26, as added Pub. L. 100-679, §5(a), Nov. 17, 1988, 102 Stat. 4058; amended Pub. L. 103-355, title II, §2453, title VIII, §8301(d), Oct. 13, 1994, 108 Stat. 3326, 3397; Pub. L. 104-106, div. D, title XLII, §4205, title XLIII, §4321(h)(4), Feb. 10, 1996, 110 Stat. 656, 675; Pub. L. 106-65, div. A, title VIII, §802(a), (b), Oct. 5, 1999, 113 Stat. 701; Pub. L. 109-163, div. A, title VIII, §822, Jan. 6, 2006, 119 Stat. 3386.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Level IV of the Executive Schedule, referred to in subsec. (e), is set out in section 5315 of Title 5.

For the effective date of this paragraph, referred to in subsec. (f)(5)(A)(ii), as 180 days after Oct. 5, 1999, see section 802(i) of Pub. L. 106-65, set out as an Effective Date of 1999 Amendment; Regulations; Implementation; Construction note below.

The Contract Disputes Act, referred to in subsec. (h)(2), probably means the Contract Disputes Act of

1978, Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

Section 2168 of title 50, Appendix, referred to in subsec. (j)(1), was repealed by Pub. L. 100-679, §5(b), Nov. 17, 1988, 102 Stat. 4063.

The Inspector General Act of 1978, referred to in subsec. (k), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (i) of this section, which required the Board to submit an annual report to Congress on the activities and operations of the Board under this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 42 of House Document No. 103-7.

AMENDMENTS

2006—Subsec. (f)(2)(A). Pub. L. 109-163 substituted “the amount set forth in section 2306a(a)(1)(A)(i) of title 10, as such amount is adjusted in accordance with applicable requirements of law” for “\$500,000”.

1999—Subsec. (f)(2)(B)(iii), (iv). Pub. L. 106-65, §802(a), added cls. (iii) and (iv).

Subsec. (f)(5). Pub. L. 106-65, §802(b), added par. (5).

1996—Subsec. (f)(2)(B)(i). Pub. L. 104-106, §4205(1), added cl. (i) and struck out former cl. (i) which read as follows: “Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.”

Subsec. (f)(2)(B)(iii). Pub. L. 104-106, §4205(2), struck out cl. (iii) which read as follows: “Any other firm fixed-price contract or subcontract (without cost incentives) for commercial items.”

Subsec. (f)(3). Pub. L. 104-106, §4321(h)(4), substituted “The Administrator” for “Not later than 180 days after November 17, 1988, the Administrator”.

1994—Subsec. (f)(2). Pub. L. 103-355, §8301(d), designated existing provisions as subpar. (A), substituted a period for “, other than contracts or subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation”, and added subpars. (B) and (C).

Subsec. (f)(3). Pub. L. 103-355, §2453, which directed substitution of “The Administrator” for “Not later than 180 days after the date of the enactment of this section, the Administrator”, could not be executed because those words did not appear in the original.

EFFECTIVE DATE OF 1999 AMENDMENT; REGULATIONS; IMPLEMENTATION; CONSTRUCTION

Pub. L. 106-65, div. A, title VIII, §802(c)-(e), (g)-(i), Oct. 5, 1999, 113 Stat. 701, 702, provided that:

“(c) REGULATION ON TYPES OF CAS COVERAGE.—(1) The Administrator for Federal Procurement Policy shall revise the rules and procedures prescribed pursuant to section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) to the extent necessary to increase the thresholds established in section 9903.201-2 of title 48 of the Code of Federal Regulations from \$25,000,000 to \$50,000,000.

“(2) Paragraph (1) requires only a change of the statement of a threshold condition in the regulation referred to by section number in that paragraph, and shall not be construed as—

“(A) a ratification or expression of approval of—

“(i) any aspect of the regulation; or

“(ii) the manner in which section 26 of the Office of Federal Procurement Policy Act is administered through the regulation; or

“(B) a requirement to apply the regulation.

¹ See References in Text note below.

“(d) IMPLEMENTATION.—The Administrator for Federal Procurement Policy shall ensure that this section and the amendments made by this section [amending this section] are implemented in a manner that ensures that the Federal Government can recover costs, as appropriate, in a case in which noncompliance with cost accounting standards, or a change in the cost accounting system of a contractor segment or subcontractor segment that is not determined to be desirable by the Federal Government, results in a shift of costs from contracts that are not covered by the cost accounting standards to contracts that are covered by the cost accounting standards.

“(e) IMPLEMENTATION OF REQUIREMENTS FOR REVISION OF REGULATIONS.—(1) Final regulations required by subsection (c) shall be issued not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].

“(2) Subsection (c) shall cease to be effective one year after the date on which final regulations issued in accordance with that subsection take effect.

“(g) INAPPLICABILITY OF STANDARDS TO CERTAIN CONTRACTS.—The cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)), as amended by this section, shall not apply during fiscal year 2000 with respect to a contract entered into under the authority provided in chapter 89 of title 5, United States Code (relating to health benefits for Federal employees).

“(h) CONSTRUCTION REGARDING CERTAIN NOT-FOR-PROFIT ENTITIES.—The amendments made by subsections (a) and (b) [amending this section] shall not be construed as modifying or superseding, nor as intended to impair or restrict, the applicability of the cost accounting standards described in section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) to—

“(1) any educational institution or federally funded research and development center that is associated with an educational institution in accordance with Office of Management and Budget Circular A-21, as in effect on January 1, 1999; or

“(2) any contract with a nonprofit entity that provides research and development and related products or services to the Department of Defense.

“(i) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) [amending this section] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1999], and shall apply with respect to—

“(1) contracts that are entered into on or after such effective date; and

“(2) determinations made on or after such effective date regarding whether a segment of a contractor or subcontractor is subject to the cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)), regardless of whether the contracts on which such determinations are made were entered into before, on, or after such date.”

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. In the case of an employee of a private sector organization assigned to an agency under chapter 37 of title 5, in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.

(2) Paragraph (1) applies to any person who—

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information

A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment

(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(A) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(B)(i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.